

To: Maddie Smith (Madelyn.Smith@epa.ohio.gov)[Madelyn.Smith@epa.ohio.gov]
From: Patterson, Leslie
Sent: Mon 5/4/2015 8:49:41 PM
Subject: FW: South Dayton Dump--revised ASAOC and SOW
2015 SOW 4-30-15 ljp clean copy.docx
2015 ASAOC LSSH EditsTCNresponse 05-04-15.docx

Maddie, I'm forwarding the email Tom Nash sent to Larry Silver with the ASAOC and SOW that EPA revised after reviewing Larry's and OEPA's comments.

Leslie Patterson

Remedial Project Manager

U. S. Environmental Protection Agency, Region 5

Superfund Remedial Response, SR-6J

77 West Jackson Boulevard

Chicago, IL 60604

tel: (312) 886-4904

fax: (312) 692-2491

patterson.leslie@epa.gov

From: Nash, Thomas
Sent: Monday, May 04, 2015 3:17 PM
To: Larry Silver
Cc: Patterson, Leslie
Subject: South Dayton Dump--revised ASAOC and SOW

Larry:

Leslie and I have reviewed the revisions you offered us on the ASAOC and SOW. We have accepted some of your suggested changes and rejected others. We have also made some other

minor revisions to the language used. I am attaching a clean copy of the SOW as Leslie revised it, including some of the changes you suggested. I am also attaching a copy of the ASAOC as I revised it, again, including some changes you suggested. I added a few small changes (in redline) based on comments from the State.

When you've had a chance to review the attached files, give me a call and we'll arrange a time to discuss what we need to do to get a signed ASAOC in the most expeditious fashion.

Thanks, Tom

From: Larry Silver [mailto:lsilver@lssh-law.com]
Sent: Friday, April 24, 2015 2:58 PM
To: Nash, Thomas
Subject: South Dayton Dump - DAP and La Mirada

Tom,

Per a discussion we had recently, I am providing this email to give you same background information on DAP Products, Inc. and its relationship to the South Dayton Dump and Landfill ("SDD").

In depositions in the private contribution action litigation for the SDD site, Ed Grillot testified that he saw products with the name of DAP in waste at SDD in the 1960s. Grillot knew DAP to be a Dayton-area company. At that time, the DAP entity in the Dayton area was named "DAP, Inc.", which I will refer to as "Old DAP".

La Mirada

Old DAP eventually changed its name to La Mirada Products Co., Inc. ("La Mirada"). La Mirada filed for bankruptcy in 2001 and was discharged in 2006. We named La Mirada as a defendant in the contribution action. La Mirada filed a motion for judgment on the pleadings based upon the 2006 bankruptcy discharge; Judge Rive overruled the motion on the ground that there was an issue of fact as to whether the bankruptcy discharged La Mirada's potential liability at SDD. The opinion is attached. Based on his ruling, we believe that the facts will show that

the La Mirada bankruptcy discharge will not affect its potential liability at SDD.

New DAP

In the contribution litigation, we also named as a defendant the entity “DAP Products Inc.” DAP Products Inc. received your Special Notice Letter earlier this year.

In 1991, the assets of Old DAP (i.e. DAP, Inc., the entity that had waste at SDD that Ed Grillot observed at SDD) were sold to a British company named Wassell PLC that created a subsidiary to accept the assets named “DAP Products Inc.”, which I will call “New DAP”. The 1991 assets purchase agreement is attached. New DAP is still in business as a subsidiary of RPM, Inc., following a sale by Wassell PLC to RPM in 1999. The 1991 assets sale agreement is less than crystal clear, but New DAP arguably assumes Old DAP’s La Mirada’s off-site disposal liabilities but only up to a set dollar amount (6M).

We felt it was appropriate to name both La Mirada and New DAP as defendants for the Old DAP SDD liability. As noted, La Mirada is Old DAP by a name change. New DAP appears to have assumed the Old DAP liabilities. Our confidence in naming New DAP was increased by what transpired in the Valleycrest litigation. New DAP was named in that litigation and participated in a settlement of the Old DAP liability, and never contested that it was a successor. La Mirada was not a named defendant in the Valleycrest litigation and did not participate in the settlement. The settlement agreement is attached.

Please let me know if you have any other questions about this subject.

Regards,

Larry

Larry Silver
lsilver@lssh-law.com

Direct: 215.239.9023



1818 Market Street, Suite 3400, Philadelphia, PA 19103-5319
215-732-3255 | FAX: 215-732-3260

65 South Main Street, Suite B103, Pennington, NJ 08534
856-727-0057 | FAX: 856-727-0315

www.lssh-law.com

This message and any attachments may contain confidential or privileged information and are only for the use of the intended recipient of this message. If you are not the intended recipient, please notify the sender by return email, and delete or destroy this and all copies of this message and all attachments. Any unauthorized disclosure, use, distribution, or reproduction of this message or any attachments is prohibited and may be unlawful.

Any Federal tax advice contained herein is not intended or written to be used, and cannot be used by you or any other person, for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Code. This disclosure is made in accordance with the rules of Treasury Department Circular 230 governing standards of practice before the Internal Revenue Service. Any written statement contained herein relating to any Federal tax transaction or matter may not be used by any person without the express prior written permission in each instance of a partner of this firm to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed herein.
